



# CHILD MARRIAGE IN HINDU LAW: THE LEGAL STATUS

Dr. Hiren B. Patel

Assistant Professor, Maneklal Nanavati Law College, Ahmedabad, Gujarat, India.

## ABSTRACT

In India, the horrible practise of child marriage has been practised since the mediaeval times. Even legislators have recognised the legality of child marriage. The laws that govern marriage are known as personal laws. The criterion of a lawful marriage is outlined in Section 5 of the Hindu Marriage Act. The age of marriage is one of the key prerequisites for lawful marriage, according to Section 5(iii) of the Act. The bride is 18 years old, and the groom is 21 years old, according to the section. The researcher believes that people do not strictly adhere to the age criterion. Because it is a personal law, it has been given greater weight than other laws. Because precedents show that child marriage does not fall under the provisions of sections 11 and 12 of the Hindu Marriage Act. Furthermore, the validity of the child's marriage is ambiguous, yet it is penalised under the Act. As a result, the researcher finds that the validity of child marriage must be reconsidered in light of the kid's welfare.

**KEYWORDS:** Child, Marriage, Hindu Law, Age, Factum Valet, Legislation.

## INTRODUCTION:

Since the dawn of civilization in human history, child marriage has predominated in early AD 700, and before that, young men and women recognised a liberal idea of love and freely chose a mate under the concept of romantic partnership.

As states grew in power during the mediaeval period, various changes in social structure occurred. In India, as a result of complicated governmental systems and social developments, people's lifestyles and opinions shift from simple to complex, particularly when it comes to the concept of liberty. As a result, this woman lost her rights and was forced to follow the rules and follow the code of conduct, as well as face family discipline. Young women are thought to be irrational in love, so their parents marry them young before they become embroiled in controversies. As a result of these practises, children as young as 12 are married, increasing the risk of child marriage.

This idea gave rise to the practise of "bal vial" [child marriage], which was a result of the high infant mortality rate, which wreaked havoc on youngsters.

As a result, the purpose of this essay is to objectively examine child marriage in India, to determine the benefits and drawbacks, and to recommend legal remedies that are appropriate for the current social system.

## MEANING OF MARRIAGE:

In *Tikait Munmahinti v. Basant Kumar*, observed marriage was sacrament, a union, an indissoluble union of flesh with flesh, born with born to be continued even in the next world. As per Hindu texts, a man can't be said to have a material existence until he took a wife. A man is the only half of his self. Therefore, he is not fully born until he takes a wife and after marriage alone, he becomes complete.

In *APASTHAMB*: marriage was meant for doing good deeds and for attainment of moksha. In *MEDHATITHI*: marriage was not a contract but an indissoluble tie. It's solemnised once for all.

## CONDITIONS FOR MARRIAGE UNDER HINDU MARRIAGE ACT, 1955:

Section 5 of Hindu Law states about the conditions for valid marriage. The conditions are categorised as follows:

- i. Monogamy
- ii. Soundness of mind
- iii. Age of marriage
- iv. Beyond prohibited degrees
- v. Beyond 'sapinda' relationship

5(iii) the third condition is that "the bridegroom has completed the age of 21 years and the bride age of 18 years at the time of the marriage".

In 1978, the age was changed. It used to be 15 for the bride and 18 for the bridegroom. Almost every legal system has allowed young people to marry, and the age of marriage and the age of majority have differed. Typically, girls have been

permitted to marry between the ages of 13 and 16, and if they are under the age of majority, the guardian's consent or concern for marriage is required.

There was a time when raising the age of marriage to prohibit child marriage was popular over the world. To achieve the first goal, the United Nations ratified the Convention on Consent to Marriage, Minimum Age for Marriage, and Marriage Registration on December 12, 1962.

Despite the fact that we have convention, the bride is the recipient of a gift, and her age had no bearing on the marriage's validity. The bride must be at least 15 years old, according to the Hindu Marriage Act of 1955. If she is under the age of 18 (i.e., a minor), her guardian's agreement in marriage shall be acquired. The minimum age for the bride is now 18 years, thanks to a 1978 modification to the Hindu Marriage Act. As a result, guardianship in marriage is not a concern, therefore section 6 has been eliminated. The Child Marriage Restraint (Amendment) Act, 1978) upped these requirements to 18 for the bride and 21 for the groom, but the law commission's 59th report concluded that "the popular understanding that the breach of that condition does not impact the legitimacy of marriage" should be preserved.

Though the policy's goal is to discourage child marriage, if it is implemented, the marriage's validity will be unaffected. That is, marriages solemnised against one's will are not void or voidable, but are penalised under section 18 of the Hindu Marriage Act and the Child Marriage Restraint Act, 1929 (19 of 1929), both of which are aimed at preventing child marriage.

The requirements of section 3 of the Child Marriage Prohibition Act of 2006 (6 of 2007) will take precedence over the provisions of this Hindu marriage Act.

That is to say Child marriages are voidable at the discretion of the contracting party being a child, however the Hindu Marriage Act, 1955, is a personal law in which the personal law takes precedence and is frequently ignored. Because the DOCTRINE OF FACTUM VALET validated the marriage made against the law of age. Some of the five marital criteria are necessary, while others are optional, thus if one is broken, it is justified under the idea of factum valet. This means that, despite the fact that there are legal implications, a child marriage was rendered official with the approval of the guardian. There are many critics on this point, but the vacuum is still not enforced. If the marriage is not strictly void or voidable after it is solemnised in breach of the age requirement, the husband, as the natural guardian, may be granted custody of the minor bride. In any of these scenarios, the parties to the marriage have very limited recourse.

The 1976 amending law established a remedy, stating that if a girl was married before the age of 15 and repudiated the marriage before the age of 18, she might seek for divorce on this grounds, regardless of whether or not the marriage was consummated.

## JUDICIAL PRONOUNCEMENTS:

### Lajja v State:

The Delhi High court held that the PCMA prevails over personal laws.

### Independent Thought v. Union of India:

In the landmark judgement; the Supreme Court of India on 11<sup>th</sup> October 2017 ruled that sexual intercourse or sexual acts by a man with his minor wife would amount to rape for the purposes of Section 375 of the Indian Penal Code, 1860.

The Court has read down Exception 2 to Section 375 which reads Sexual intercourse or sexual acts by a man with his own wife, the wife not being below 15 years of age, is not rape to hold that sexual activity with a minor would constitute rape and the exception will not be applicable in cases where the wife is between the ages of 15-18.

#### **P.Venkataraman v. State:**

The only consequence of child marriage is that persons concerned are liable for the punishment under sec 18 of HMA, 1955, and a decree of divorce is liable to be given to the parties, if they wish so.

#### **Krishna Pillai v. T.A Rajendran:**

The court was worried about Section 9 of the Child Marriage Restraint Act, 1929, which stated that no court shall take notice of any offence under the Child Marriage Restraint Act, 1929 after one year has passed from the date on which the alleged violation was committed. The three-judge bench held that the Magistrate was not competent to take cognizance when he did in light of the bar under Section 9 of the Child Marriage Restraint Act, 1929, because magisterial action in the case before it was beyond the period of one year from the date of commission of the offence.

The question of whether the relevant date for computing the period of limitation under Section 468 of the Cr.P.C. in respect of a criminal complaint is the date of filing the complaint or the date of institution of prosecution, or whether the relevant date is the date on which a Magistrate takes cognizance, appeared to be in dispute.

#### **CONCLUSION:**

Despite the fact that many laws were enacted at various times to avoid the evil of child marriage, it continued to persist in society. Child marriage is not void and voidable, according to the law, in order to provide social protection to young girls who marry at a young age. The court in *V. Mallikarjunaiah v. H.C. Gowramma* explained why child marriages are legitimate and why they are specifically exempt from section 11 and 12.

According to the court, "Given the social strata in which such marriages were expected to occur, the legislature was wary of allowing such a provision to result in a large number of girls and young women becoming essentially unmarried or impoverished. The only security a girl or woman in such a situation has is within the confines of the marriage, and if the marriage can be loosely undone or is not recognised by the law, it will have disastrous social consequences, which is the only reason this section was specifically excluded from sections 11 and 12 of the Hindu marriage act."

Diverse people have different perspectives on society. In general, today's civilised society and social reformers recognise the value of a woman's health and social status. Despite the fact that we have specific legislation to discourage child marriage, we can still see child marriages because the Hindu Marriage Act's section 5 (iii) has been liberalised.

As a result, we must repeal the statute that recognises child weddings, impose severe penalties on the guardian who solemnises the marriage, and declare such child marriages illegal. Any rule with a new dimension will effect a small group of people in the past, but this will be overcome by our society to put an end to the wicked behaviour.

#### **REFERENCES:**

1. (2017) 10 SCC 800
2. 1990 (Supp) SCC 121
3. AIR 1997 Kant 77, P.82:ILR 1997 Kar 964.
4. Court on its own motion (*Lajja Devi*) v State and Ors, 2013 Cri LJ 3458
5. Early and Child Marriage in India. New Delhi: Nirantar Trust.
6. Early Marriage: Child Spouses Innocenti Digest 7 (2001): 1-18.
7. <https://www.casemine.com/>
8. <https://www.unicef.org/stories/child-marriage-around-world>
9. *Kokulla Suresh v. State of AP*: AIR 2009 AP 52: (2009) 1 ALT 607.
10. Law Commission, 59<sup>th</sup> report, Para 3.21.
11. *Manisha Singh v. State Government of NCT*, AIR 2006 Del 37: 2006(1) Chand Crc 208:2006(1) DMC 1:2007(1) Marri LJ 448(DB)
12. Section 13(2)(iv) of the Hindu Marriage Act, 1955.
13. *T.Sivakumar v. Inspector of police Tiruvallur Town Police Station*, AIR 2012 Mad 62:III(2011), DMC 566:2011-2-LW(Crl) 385:2012(4) RCR(civil) 862(CFB).